

Internal Revenue Service

Department of the Treasury

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Person to Contact:

Refer Reply To:

CC:PSI:1-GENIN-104465-03

Date:

April 29 2003

Dear [REDACTED]:

We are responding to correspondence dated September 3, 2002, on behalf of [REDACTED] ("Taxpayer"), requesting relief in order to revoke its S corporation election.

According to the information submitted, the Taxpayer was incorporated on September 11, 2000. As the President of the Taxpayer, you signed and dated a Form 2553 on behalf of the Taxpayer on September 6, 2000. The Form 2553 was filed to make an S election on behalf of the Taxpayer. The records of the Internal Revenue Service indicate that it received the Form 2553 on October 12, 2000. The Taxpayer began doing business on January 1, 2001 and its S election came into effect on January 1, 2001. The Taxpayer now wishes to revoke the S election retroactively to its effective date, claiming that its S election was invalid as the Form 2553 was executed prior to its incorporation.

Pursuant to §1.1362-2 of the Income Tax Regulations, an election made under §1362(a) of the Internal Revenue Code is terminated if the corporation revokes the election for any taxable year of the corporation for which the election is effective, including the first taxable year. A revocation must be made with the consent of all shareholders holding more than one-half of the issued and outstanding stock of the corporation. In general, a revocation is prospective. However, a revocation made during the taxable year and before the 16th day of the third month of the taxable year is effective on the first day of the year and a revocation made after the 15th day of the third month of the taxable year is effective for the following taxable year. If a corporation makes an election to be an S corporation that is to be effective beginning with the next taxable year and revokes its election on or before the first day of the next taxable year, the corporation is deemed to have revoked its election on the first day of the next taxable year. If a corporation specifies a date for revocation and the date is expressed that is on or after the date the revocation is filed the revocation is effective on and after

the date so specified.

In the instant case, although you executed the Form 2553 prior to the Taxpayer's date of incorporation, the records of the Service indicate that the form was filed on behalf of the Taxpayer subsequent to the Taxpayer's date of incorporation. In other words, the S election was made after the Taxpayer became a domestic corporation eligible for making an S election. As such, the Service correctly accepted the S election as valid. With respect to the request to retroactively revoke the S election to its effective date, there is currently no provision which allows such action.

In order to guide taxpayer education, the Service has developed two new CD-ROMs to help educate small business owners on their tax responsibilities: (1) *Introduction to Federal Taxes for Small Business/Self-Employed*; and (2) *A Virtual Small Business Workshop*. These two CD-ROMs are free and can be ordered by calling 1-800-829-3676. The Service also provides a special website, www.irs.gov/smallbiz which is dedicated to providing information to small business taxpayers.

Please keep this letter with your tax records. We hope that the above information proves helpful. In accordance with the Power of Attorney on file with our office, a copy of this letter is being mailed to your authorized representative.

Sincerely yours,

/s/ David R. Haglund

David R. Haglund
Senior Technician Reviewer
Branch 1
Associate Chief Counsel
(Passthroughs and Special Industries)

cc: